Filed 4/12/10 Arnold v. City of Los Angeles CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ALLEN ARNOLD et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B214153 (Los Angeles County Super. Ct. No. BS112488)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Yaffee, Judge. Affirmed.

Knickerbocker Law Corporation and Richard L. Knickerbocker for Plaintiffs and Appellants.

Carmen A. Trutanich, City Attorney and Gerald M. Sato, Deputy City Attorney for Defendants and Respondents.

I. INTRODUCTION

Plaintiffs, Allen Arnold and Jeanette Arnold, appeal from a judgment denying their petition for writ of administrative mandate (Code Civ. Proc., § 1094.5) to overturn a decision of the Rent Adjustment Commission ("the commission") of the City of Los Angeles' ("the city") Housing Department concerning a request to raise the monthly rent of two of three units owned by the couple on Harlow Avenue. Plaintiffs contend the judgment must be reversed because the commission unlawfully rejected a hearing officer's decision which would have allowed a monthly rental increase of $532.67 plus a 39-month surcharge of $55 per unit. Instead, the commission allowed plaintiffs to increase the rent by $159.97 per month plus a 39-month surcharge of $55 per unit. We affirm the judgment denying the mandate petition.

II. BACKGROUND

The record shows that plaintiffs own three units of real property identified as 9404 through 9411 Harlow Avenue in the city. On August 31, 2006, plaintiffs filed an application with the Rent Stabilization Division of the city's Housing Department ("the department"). The initial application sought a just and reasonable rent increase on the base rents for two of the three units in the amount of $53.73 per month per unit.

On November 2, 2006, James Bloor, a finance development officer of the department, sent a letter to plaintiffs indicating that the application had been reviewed. Mr. Bloor stated that he came up "with an increase of $532.67 per unit per month plus a $55 surcharge for 39 months." Mr. Bloor queried whether plaintiffs had made an error on their August 31, 2006 application. By letter dated April 24, 2007, plaintiffs stated they had reviewed the August 31, 2006 application and discovered that an error had been made. Plaintiffs requested a rent increase of $532.67 plus a $55 surcharge for 39 months.

In support of the $532.67 per month increase, plaintiffs attached to the April 24, 2007 letter a comparative analysis dated November 1, 2006.

On May 24, 2007, Mr. Bloor submitted a staff analysis concerning the application. The analysis notes that plaintiffs utilized a base year of 1994 and 2005 as the current year for the just and reasonable determination. The analysis provides that adjustments were made in order to comply with Section 241.06 of the commission's Just and Reasonable Guidelines ("the guidelines") due to the occupancy of one of the units by one of plaintiffs' relatives. Guideline, section 241.06 provides: "Adjusted Income for Below Market Rentals is an amount representing the difference between the actual rent collected and what the landlord could have collected if the units had been rented at their full market value. Examples of below market rents include but are not limited to units occupied by the landlord, the landlord's family, or the unit of a resident manager. The below market rent is determined by the rent level of the highest comparable unit in the rental complex. Where there is no exact comparable unit, the below market rent is determined on the basis of the highest rent for a unit in the same rental complex adjusted for differences in size, amenities, etc. Where there is no comparable rental unit within the complex, the rent of a comparable unit in the immediate neighborhood may be used. The burden of proof is on the applicant to establish a reasonable basis for estimating the below market rent. [¶] A) In the Base Year a landlord is <u>permitted</u> to make an upward adjustment of Gross Income only for a unit occupied by the landlord, landlord's family, or by a manager, agent, or employee where, in the Base Year, either no rent was charged or a rent level below that of a comparable unit can be demonstrated. [¶] B) In the Current Year, a landlord <u>must</u> make an upward adjustment in the Gross Income for any unit occupied by the landlord, the landlord's family or by a manager, agent, or employee where the unit is rent free or where the rent is lower than the rent in the building for a comparable unit. [¶] C) In addition, the Current Year Gross Income <u>must</u> be adjusted upward to reflect lost rent or below market rents for units permanently removed from rental housing use."

The May 24, 2007 analysis provides in part: "Section 241.06 of the Guidelines speaks to adjustments for a unit occupied by the landlord or property manager. The Guidelines state that in the base year, 'a landlord is permitted to make an upward adjustment of Gross income' for such a unit, but in the current year, 'a landlord must make' such an adjustment. While one unit was owner occupied in both years, as ascribing income to that unit in the base year is discretionary, it was not done for the purpose of the [just and reasonable] analysis." The analysis recommended a rental increase of $159.97 per unit per month, plus a 39-month surcharge of $55.00 per unit. The May 24, 2007 analysis reiterated: "(As noted above, an adjustment for below market rental for the owner's unit was not applied in the base year. Should it have been, the increase would have been $533.03 plus the $55 surcharge, for a total of $588.03.)"

On June 11, 2007, Howell Tumlin, a hearing officer, held a public hearing to consider the merits of the application. At the hearing, the city recommended a rental increase of $159.97 per unit per month, plus a 39-month surcharge of $55.00 per unit. Plaintiffs testified at the hearing. Due to their ages, Mrs. Arnold expected increased operating costs because she and her husband had performed maintenance in the past but would have to hire someone in the future. Tenant Tony LaTorre testified that the rent had been below market value for a number of years because of an agreement with plaintiffs to accept a lower rent in exchange for foregoing repair of damage caused by a 1994 earthquake. The earthquake repairs were made in 2006.

On June 26, 2007, the hearing officer found that plaintiffs were entitled to a monthly increase in the amount of $532.67 per unit per month plus a 39-month surcharge of $55.00. The hearing officer's decision states that the applicant claimed 1994 as the base year and 2005 as the current year for purposes of determining if a rent increase was required in order for the owners to have a just and reasonable return on the property. The hearing officer cited guideline section 241.06, which *permits* a landlord to make an upward adjustment of gross income for an owner or relative occupied unit in the base. However, guideline section 241.06 states that in the current year the landlord *must* make

an adjustment if the unit is occupied by the owner or relative. The record showed that in both the base and current years the third unit was occupied by a relative. The hearing officer determined that the April 24, 2007 letter amended the August 2006 application.

The hearing officer's June 26, 2007 decision provides in part: "The [city] recommended a rent increase of $159.97 per month per unit for this property because it found that [plaintiffs] did not elect to impute rental income in the base year for a relative-occupied unit in [their] application. The Hearing Officer notes, however, that the comparative analysis spreadsheet attached to the April 24, 2007 letter in which [plaintiffs] amended the application does list imputed income in the base year in the amount of $10,096.00. The Hearing Officer therefore finds that the [city] correctly accepted the April 24, 2007 letter and attachment as amending [plaintiffs'] application but overlooked the fact that the analysis included an adjustment for below market rent in the base year for the relative-occupied unit. The amended application does contain a calculation for imputed rental income for the relative-occupied unit." The hearing officer concluded the city had erred in overlooking the imputed rental income in the base year in the amended application comparative analysis, which had been submitted on April 24, 2007. The hearing officer further noted that section 246.07 of the guidelines prohibits a hearing officer from authorizing a rent increase that exceeds the amount requested in the application.

Tenants and real parties in interest, Lori Allen and Tony LaTorre and Cheryl Barner-LaTorre appealed the hearing officer's decision to the commission.

Mr. Bloor prepared a report summarizing the department's position for the appeal to the commission. The report indicated the department and the hearing officer disagreed on the treatment of the owner occupied unit in the base year under section 241.06 of the guidelines. The report states the initial application did not make an adjustment for the owner occupied unit. The department calculated the amount by ascribing income to the owner occupied unit for both the base and current years and then only in the current year pursuant to paragraph B of guideline 241.06. According to the report, the hearing officer

reached his decision by recognizing the discretionary calculation for the base year but found plaintiffs had reapplied under the program such that the higher figure should be awarded. The report concludes: "While the Department recognizes the rationale used in the Hearing Officer's decision, it respectfully disagrees with his conclusion. As the use of income for an owner occupied unit is discretionary in the base year and as the owner [did not] attribute any such income in either year, the computation was done by the Department. As a result, it continues to be the Department's recommendation that a rental increase of $159.97 per unit per month be approved plus a surcharge of $55.00 per unit per month for a period of 39 months."

An attachment to the report indicated that the just and reasonable rent adjustment could not be granted without complying with the Los Angeles Rent Stabilization Ordinance, which is in chapter XV of the Los Angeles Municipal Code.[1] Section 151.07, subdivision (B) requires a determination that the increase be "in keeping with the purposes of the chapter." Section 151.01 states that there are two bases for the rent control law: (1) "to safeguard tenants from excessive rent increases"; and (2) at the same time, to ensure a just and reasonable return on the investment to the owner. The hearing officer's decision amounted to a 70% rent increase for Ms. Allen. The LaTorre rent will increase by 51%. The increases would violate one purpose of the rent control law, which is to protect tenants from excessive rent increases. The hearing officer abused his discretion by allowing plaintiffs to include an adjustment for a below market rent unit in the base year. The hearing officer erred and abused his discretion by allowing the five categories expenses which were not supported by adequate documentation.

The commission conducted a hearing on the appeal on September 6, 2007. On September 18, 2007, the commission modified the hearing officer's decision by approving a permanent rent increase of $159.97 per unit per month plus a temporary surcharge of $55.00 per unit per month for a period of 39 months. The commission's

---

[1] All further statutory references are to the Los Angeles Municipal Code unless otherwise stated.

decision provides: "In making its determination, the [commission] finds that the Hearing Officer abused his discretion in approving a permanent rent increase of $532.67 per unit per month and a temporary surcharge of $55 per unit per month for a period of 39 months in that his decision was against the purpose and intent of the Rent Stabilization Ordinance as it approved an excessive amount. In addition, the [commission] finds that the Hearing Officer erred in admitting the amendment of the Just and Reasonable rent increase application based on the April 24, 2007 letter submitted by [plaintiffs]."

On December 14, 2007, plaintiffs filed their mandate petition. The petition alleged that the commission arbitrarily, capriciously and unreasonably modified the hearing officer's decision. In support of their petition, plaintiffs presented the following evidence. Plaintiffs had delayed seeking a rental increase because of damages caused by the Northridge Earthquake. Following the earthquake, plaintiffs were involved in litigation with their insurance company. Thus, due to the damages in the units and the insurance litigation, no rental increases were sought until plaintiffs recovered from the insurance company.

According to plaintiffs, section 151.07, subdivision (B)(4) limits the commission's review of the hearing officer's decision to determining whether there has been an abuse of discretion, errors or new information. Plaintiffs argued that the hearing officer's decision was well-reasoned and factually supported. As a result, the commission should not have overturned the hearing officer's decision in his capacity as "the trial court in ruling on the rent increase application." Plaintiffs asserted the commission's decision denied a fair rate of return on their investment so that the tenants may continue to pay below market rents without any evidence of need. The constitutional concerns of rent control are that landlords should not be deprived of a fair rate of return and the regulation should not be confiscatory. Due to the earthquake, the apartment building is being operated at a loss and the rental units are currently below market value. The hearing officer made two decisions: the first was to impute income to the owner-occupied unit in the base year; and the second was to allow plaintiffs to amend their application to

conform to proof. The hearing officer's approval of a fair rate of return was in accordance with the guidelines and the commission lacked discretion to overturn the decision without making formal findings as to how the hearing officer had abused his discretion.

The city opposed the petition on the ground the hearing officer did not proceed in a manner required by law. The city argued the amount of the rental increase approved by the hearing officer was excessive. This was because the upward adjustment for the base year was discretionary not mandatory. The amount approved by the department was in accordance with the guidelines given that the August 31, 2006 application did not request an upward adjustment for the base year. The city reiterated that the base year upward adjustment was discretionary. The amount approved by the commission of $159.97 per month plus the $55 per month surcharge provides a fair rate of return. It also was four times more than the $53.73 per unit that plaintiffs initially sought in the August 31, 2006 application.

The city further argued the hearing officer's decision did not comply with sections 151.01 and 151.07, subdivision B(1), which required a determination of the rental increase in accordance with the purpose of the statute to protect tenants from excessive rent increases. Even if the hearing officer properly considered the April 24, 2007 letter, the hearing officer did not give any consideration to the effect of 70% and 51% rental increases on the tenants. The commission's decision is adequately supported by the evidence. The commission's decision concluded the hearing officer had abused his discretion by approving excessive rental increases which was against the purpose of rent control law.

The trial court denied the mandate petition. In denying the petition, the trial court noted the city had refused to allow plaintiffs to base the application for a just and reasonable rate upon an upward adjustment of gross income for the owner occupied unit for the base year as requested in the April 24, 2007 letter (to amend the August 31, 2006 application). This was because "it would cause the tenants to suffer an excessive rent

increase over the rent charged in the prior year and this would violate the Rent Stabilization Ordinance." The trial court concluded the commission's finding, the use of the guidelines to support a 70 percent increase in rent on one of the units and a 51 percent increase on the other unit in one year was unreasonable, was supported by substantial evidence. The trial court explained the commission did not abuse its discretion in refusing to allow plaintiffs to use the guideline to obtain a rent increase which would violate section 151.01 of the city's Rent Stabilization Ordinance by permitting rental adjustments of 70 percent and 51 percent from the prior year. The trial court further stated: "Section 151.06, [subdivision (D)] . . . provides that automatic rent increases may be made based on the Consumer Price Index. Section 151.07 . . . permits the Commission to grant individual rent adjustment for capital improvements, rehabilitation work, or primary renovations, by amortizing the cost of said work over many months in order to prevent abrupt increases in rent." After the trial court entered its judgment denying the mandate petition, plaintiffs filed this timely appeal.

III. DISCUSSION

Our Supreme Court has held: "A petition for administrative mandamus is appropriate when the party seeks review of a 'determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency . . . ." (*Western States Petroleum Assn.* v. *Superior Court* (1995) 9 Cal.4th 559, 567.) A landlord may seek judicial review of a rent control board's decision by petition for writ of mandate in the superior court. (Code Civ. Proc., § 1094.5; *Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1022; *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 767; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board* (1999) 70 Cal.App.4th 281, 287.) "In ruling on a petition for writ of administrative mandamus, the trial court reviews the administrative

record to determine whether the agency's decision is supported by substantial evidence. [Citations.] The court must consider all relevant evidence in the record, but "'[i]t is for the agency to weigh the preponderance of conflicting evidence [citation]. Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency."' [Citations.] The standard of review for this court is identical: We, too, determine whether substantial evidence supports the administrative decision. [Citations.]" (*Eden Hospital Dist.* v. *Belshé* (1998) 65 Cal.App.4th 908, 915-916; see also *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 218; *Concord Communities, L.P. v. City of Concord* (2001) 91 Cal.App.4th 1407, 1414; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board*, *supra*, 70 Cal.App.4th at p. 287.) De novo review is only appropriate if the decision rests solely upon the interpretation of the Ordinance, which is a question of law. (*MHC Operating Limited Partnership v. City of San Jose, supra,* 106 Cal.App.4th at p. 219 citing *County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668.) The court must give considerable deference to the board's interpretation of its ordinances and uphold the agency's decision unless the decision lacks a reasonable foundation or is unlawful. (*MHC Operating Limited Partnership v. City of San Jose*, *supra*, 106 Cal.App.4th at pp. 219-220; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board*, *supra*, 70 Cal.App.4th at p. 287.) Because plaintiffs are challenging the commission's administrative decision, they have the burden of proving that the commission's decision is unreasonable or unlawful. (*Wirth v. State* (2006) 142 Cal.App.4th 131, 138; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Board*, *supra*, 70 Cal.App.4th at p. 287 citing *301 Ocean Ave. Corp. v. Santa Monica Rent Control Bd.* (1991) 228 Cal.App.3d 1548, 1556.)

Here, the commission acting as an appeals board modified the hearing officer's decision by refusing to permit plaintiffs to raise rents under the guidelines in a manner which would cause a 70 percent increase for one tenant and a 51 percent increase for the

other tenant in one year. The commission found the increases in one year were excessive; and, therefore, the increases were inconsistent with the purpose of the city's rent control law. Plaintiffs assert the trial court should have granted their mandate petition because: the commission lacked authority to overturn the hearing officer's decision in the absence of an abuse of discretion; the hearing officer's decision provided for a fair rate of return while the commission's decision does not; and the commission's decision fails to provide findings that establish a nexus between the evidentiary facts provided and the ultimate conclusions reached. For the reasons stated below, we disagree with plaintiffs and affirm the judgment denying the mandate petition.

We begin by noting the procedures for obtaining a rent adjustment are set forth in depth in the Los Angeles Municipal Code. Section 151.01 declares the city's purposes in enacting a rent control ordinance was to address "a shortage of decent, safe and sanitary housing" after it reached a crisis level in the summer of 1978 following the passage of Proposition 13. Section 151.01 further provides: "Tenants displaced as a result of their inability to pay increased rents must relocate but as a result of such housing shortage are unable to find decent, safe and sanitary housing at affordable rent levels. Aware of the difficulty in finding decent housing, some tenants attempt to pay requested rent increases, but as a consequence must expend less on other necessities of life. This situation has had a detrimental effect on substantial numbers of renters in the City, especially creating hardships on senior citizens, persons on fixed incomes and low and moderate income households." Section 151.01 then concludes: "Therefore, it is necessary and reasonable to regulate rents so as to safeguard tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units."

The commission was specifically established to carry out the provisions of the rent control law. Section 151.03 gives the commission "the authority to issue orders and promulgate policies, rules, and regulations to effectuate the purposes of [the Rent Stabilization Ordinance]." The commission also has the authority to "make such studies and investigations, conduct such hearings, and obtain such information as it deems

necessary to promulgate, administer and enforce any regulation, rule or order adopted pursuant to this chapter." (§ 151.03, subd. (B).) The commission was formed in order to carry out and enforce the rent control law.

The procedures for obtaining a rent adjustment are set forth in the Rent Control Ordinance. The process begins with an application to the department pursuant to section 151.07, subdivision (A)(1). The department is authorized to grant individual rent adjustments upon receipt of an application for an adjustment. However, the department's authority to grant an adjustment must be in accordance with the commission's regulations and guidelines. (*Ibid*.) The department must make a determination on the application for a rent adjustment within 45 days of receipt of the completed application. (§ 151.07, subd. (A)(2)(c).) "The determination shall be either to approve or disapprove the requested rent adjustment. If the adjustment is approved, then it must be for the amount requested." (*Ibid*.)

A dissatisfied landlord or tenant may then request a hearing on the department's determination. (§ 151.07, subd. (A)(3)(a).) The hearing is conducted by a hearing officer designated by the department. (§ 151.07, subd. (A)(3)(d).) Section 151.07, subdivision (B)(1) sets forth the hearing officer's authority as follows: "*A designated hearing officer shall have the authority, in accordance with such guidelines as the Commission may establish, to grant increases in the rent for a rental unit, or for two or more rental units located in the same housing complex, upon receipt of an application for adjustment filed by the landlord and after notice and hearing, if the hearing officer finds that such increase is in keeping with the purposes of this chapter and that the maximum rent or maximum adjusted rent otherwise permitted pursuant to this chapter does not constitute a just and reasonable return on the rental unit or units.*" (Emphasis added.) The hearing officer may base the determination of whether a rental unit yields a just and reasonable return on a number of factors such as property taxes, operating and maintenance expenses, capital improvements, living space, deterioration of the unit, inadequate maintenance, and financing on the property. (§151.07, subd. (B)(1)(a-g).) It should be

noted that the hearing officer decision must be in keeping with the purposes of the rent control law.

The hearing officer's determination may then be appealed to the commission by applicant or an affected tenant on the grounds of error, abuse of discretion or new information. (§ 151.07, subd. (B)(4)(a).) The appeal is made before three or more commissioners, who act as an appeals board. (§ 151.07, subd. (B)(4)(c).) The appeals board "may affirm, modify or reverse the determination of the hearing officer." (§ 151.07, subd. (B)(4)(d).) In modifying or reversing the determination, the appeals board must make "written findings setting forth specifically either (i) wherein the action of the hearing officer was in error or constituted an abuse of discretion, or (ii) the new information not available at the time of the hearing upon which the appellant relies, and supporting its own determination." (*Ibid*.)

We are not persuaded that the commission acted in excess of its authority in setting aside the hearing officer's decision. The city's rent control provisions clearly show that the decisions of the department, the hearing officer and the commission must be in accordance with the commission's regulations and guidelines and consistent with the purposes of the rent control law. (§§ 151.03, 151.07, subds. (A)(1) & (B)(1).) The city declared that the purpose of the law was to address housing shortages with safe, affordable and decent rentals. As a result, rents were regulated to safeguard tenants from excessive rent increases while at the same time providing landlords with just and reasonable returns on their rental units. The record shows that the commission followed the procedures established by the ordinance in modifying the hearing officer's decision. The hearing officer's decision granted an adjustment of 70 percent for one rental unit and a 51 percent increase for the second unit in one year. We find nothing amiss in the commission's conclusion that the hearing officer's decision was an abuse of his discretion. The hearing officer like the commission must comply with the purpose of the rent control law, which is to prevent excessive rent increases, while at the same time allowing for a fair return.

Furthermore, while plaintiffs are correct that the commission must set forth in writing the basis for modifying a hearing officer's decision, plaintiffs are incorrect that the commission's decision does not comply with the rent control law. The commission's decision provides: "In making its determination, the [commission] finds that the Hearing Officer abused his discretion in approving a permanent rent increase of $532.67 per unit per month and a temporary surcharge of $55 per unit per month for a period of 39 months in that his decision was against the purpose and intent of the Rent Stabilization Ordinance as it approved an excessive amount. In addition, the [commission] finds that the Hearing Officer erred in admitting the amendment of the Just and Reasonable rent increase application based on the April 24, 2007 letter submitted by [plaintiffs]." The decision clearly states that the hearing officer abused his discretion in approving the excessive rental increases in one year in violation of the city's rent control law.

For that reason, plaintiffs also incorrectly assert that the commission's decision must be reversed because, unlike the hearing officer's decision, the commission's decision does not result in a fair rate of return. "A 'just, fair and reasonable' return is characterized as sufficiently high to encourage and reward efficient management, discourage the flight of capital, maintain adequate services, and enable operators to maintain and support their credit status. However, the amount of return should not defeat the purpose of rent control to prevent excessive rents." (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 288-289; see also *Concord Communities, L.P. v. City of Concord, supra,* 91 Cal.App.4th at p. 1415; *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside* (1984) 157 Cal.App.3d 887, 907.) Stated another way: "Constitutionally valid rent control ordinances must be reasonably calculated to eliminate excessive rents and provide landlords a just, fair and reasonable return on their property. [Citations.]" (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 288.) However, local governments are not required by either federal or state Constitutions to calculate a just and reasonable return based on a particular formula

or method. (*Kavanau v. Santa Monica Rent Control Bd., supra,* 16 Cal.4th at p. 768; *Carson Mobilehome Park Owners Assn. v. City of Carson* (1983) 35 Cal.3d 184, 191; *TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1372.) The determination of what is a just and fair return requires a balancing of landlord and tenant interests. (*Kavanau v. Santa Monica Rent Control Bd., supra,* 16 Cal.4th at p. 771.) "In reviewing the decision of [the commission] an appellate court must consider whether substantial evidence indicates the rental rates provided a 'fair rate of return on the cost of the applicant's equity investment.'" (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 287 quoting *Yee v. Mobilehome Park Rental Review Bd.* (1993) 17 Cal.App.4th 1097, 1106.) "A reviewing court focuses on whether the regulatory agency took relevant investor interests into account." (*Kavanau v. Santa Monica Rent Control Bd., supra,* 16 Cal.4th at p. 771.)

In this case, section 151.06, subdivision (D) allows automatic rent increases based on the Consumer Price Index. Section 151.07 permits upward adjustments for factors such as: property taxes, operating and maintenance expenses, capital improvements, living space, deterioration of the unit, inadequate maintenance, and financing on the property. (§151.07, subd. (B)(1)(a-g).) In addition, section 241.06 of the "Just and Reasonable Guidelines" states that in a base year, a landlord is permitted to make an upward adjustment of gross income for a unit that is occupied by the landlord or a relative for whom no rent is charged. The landlord is required to make the upward adjustment in the current year. Guideline, section 240.00 provides that the base year is either 1977 or the earliest year that records are available.

Here, the landlords chose 1994 as the base year. However, in the August 31, 2006, the landlords did not make an upward adjustment for the unit occupied by their son in the base year of 1994. They also did not make an adjustment for the current year of 2005. For the current year of 2005, the commission made an upward adjustment for the relative occupied unit. The commission did not make an upward adjustment for the base year of 1994. The hearing officer's determination was predicated on the April 24, 2007

letter submitted by plaintiffs. The attachment to the April 24, 2007 included an upward adjustment for the base year. The hearing officer then approved rent increases of $532.67 per month plus $55 per month surcharge in one year. This amounted to increases of 69.76 percent for one tenant and 50.75 percent for the other tenant. But, the commission refused to grant rental increases of $532.67 a month on the ground that the increases would cause an excessive rent increase from the prior year and would violate the intent of the rent control law of protecting tenants from excessive rents. Instead, the commission approved rental monthly increases of $159.97 plus a 39-month surcharge $55 per unit. This represented an increase of 25.52 percent for one unit and 18.56 percent for the second unit.

Plaintiffs assert that the guidelines should have been followed even though the tenants would have been subjected to the 70 percent and 51 percent increases from one year to the next. We disagree. First, substantial evidence supports the conclusion that allowing 70 percent and 51 percent increases from one year to the next is not consistent with the purpose of the rent control law of avoiding excessive rents. Second, plaintiffs have not cited any evidence which establishes that the approved increases would not provide a fair rate of return. Plaintiffs ignore the fact that the commission actually approved an increase of 25.52 percent for one unit and 18.56 percent for the second unit in one year. In any event, plaintiffs had the opportunity over the years to obtain rent increases in a manner that was consistent with the purpose of safeguarding tenants from excessive rents and, *at the same time*, obtaining a just and reasonable return on their investment. Plaintiffs chose not to obtain incremental increases. Rather, they sought an excessive amount in one year. This was apparently due to the 1994 earthquake damage to the units that was not repaired until 2006. But allowing plaintiffs to make up the difference in one year would have been excessive and unreasonable. The commission's decision is supported by substantial evidence. This conclusion remains even if we review the record under a de novo standard.

For similar reasons, plaintiffs cannot prevail on their claim that the commission's decision fails to provide an evidentiary nexus between the findings and conclusions. The purpose of the rent control law is twofold: (1) to safeguard tenants from excessive rent increases; and (2) at the same time provide landlords with just and reasonable returns from their rental units. (§ 151.01.) The commission found that 70 percent and 51 percent rental increases in one year for the tenants were unreasonable and would violate the purpose of safeguarding tenants from an excessive rent increase. The record clearly shows an evidentiary basis and thus a nexus for the conclusion that granting plaintiff's requested application would have resulted in excessive rent increases of 70 percent and 51 percent in one year. The commission's decision the excessive rental increase in one year is inconsistent with the city's rent control law must be upheld.

IV. DISPOSITON

The judgment denying the petition for writ of administrative mandamus is affirmed. The City of Los Angeles is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WEISMAN, J.*

We concur:

MOSK, ACTING P.J. KRIEGLER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.